TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~272.~~ 92

THE LONDON, LIVERPOOL AND GLOBE INSURANCE COMPANY, PLAINTIFFS IN ERROR,

vs.

SAMUEL C. COLT.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CONNECTICUT.

FILED DECEMBER 14, 1872.

93

OCT. 2, 1872

SUPREME COURT OF THE UNITED STATES

No. 372.

THE LONDON, LIVERPOOL AND GLOBE INSURANCE COMPANY, PLAINTIFFS IN ERROR,

vs.

SAMUEL C. COLT.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CONNECTICUT.

INDEX.

	Original.	Print.
Writ of error	1	1
Citation	3	1
Acknowledgment of service	4	1
Original writ	6	2
Officers' return on writ	33	11
Petition for removal from State court	34	11
Bond for removal	37	12
Order for removal	38	13
Plea	41	13
Additional counts	43	14
Verdict	54	17
Judgment	54	17
Bill of exceptions	56	18
Petition for writ of error	68	21
Bond	69	21
Authentication	71	22

1 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States to the honorable the judges of circuit court of the United States for the district of Connecticut, greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in said circuit court before you, between Samuel C. Colt and The London, Liverpool, and Globe Insurance Company, a manifest error hath happened, to the great damage of the said The London, Liverpool, and Globe Insurance Company, as by their complaint appears; we, being willing that error, if any hath been, should be duly corrected, and fully and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so
2 that you have the same at Washington on the first Monday of December next in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court, this 29th day of November, in the year of our Lord one thousand eight hundred and seventy-two.

LOREN P. WALDO,
Clerk of the Circuit Court of the United States for the district of Connecticut.

Allowed by—

W'M D. SHIPMAN, *Judge.*

3 [SEAL.] The United States of America to Samuel C Colt, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States within and for the district of Connecticut, wherein The London, Liverpool, and Globe Insurance Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at Hartford, within said district of Connecticut, this 29th day November, A. D. 1872.

W'M D. SHIPMAN, *Judge.*

4 HARTFORD, *Nov.* 29, 1872.

Due and legal service of the within and foregoing citation is hereby acknowledged; and I hereby agree that the said writ may be entered at any time in the docket of the term of the court to which the same is returnable.

SAMUEL C. COLT,
By HUBBARD & ROBERTS,
His Attorneys.

The answer of Salmon P. Chase, Chief Justice of the Supreme Court of the United States, to the foregoing writ.

The record and process, whereof mention is therein made, follow in these words, to wit:

5 SAMUEL C. COLT
vs.
LONDON, LIVERPOOL & GLOBE INSURANCE Company.

Be it remembered that heretofore, to wit, at the April term of said court held at New Haven, within and for said district in the year 1871, there was filed in said court the record in a certain cause in the words and figures following, viz:

6 To the sheriff of Hartford County, his deputy, and to the sheriff of New Haven County, his deputy, and to either constable of the town of New Haven, in said New Haven County, greeting:

By authority of the State of Connecticut you are hereby commanded to attach, to the value of twelve thousand dollars, the goods or estate of The London and Liverpool and Globe Insurance Company, in the name of Henry Grinnell, deputy chairman, an association, company, and proprietorship organized under the laws of a foreign government, viz, of the kingdom of Great Britain and Ireland, and recognized by the parliament of Great Britain and Ireland, and doing business as an insurance company, insuring against loss by fire in the State of Connecticut, and according to the statutes of this State, and having agents and an attorney within this State, and an attorney for the service of process, viz, L. N. Sperry, of said New Haven, and then summon to appear before the honorable superior court, within and for the county of Hartford, next to be holden at Hartford in said county, on the second Tuesday of March, A. D. 1871, then and there to answer unto Samuel C.
7 Colt, of the city of Hartford in said Hartford, in a plea of covenant broken; whereupon the plaintiff declares and says that whereas, heretofore, to wit, on the 26th day of August, A. D. 1870, by a certain deed-pole or policy of insurance then made, and which said deed-pole being now in the possession of the defendant, and which the defendant has refused and refuses to deliver to the plaintiff, the plaintiff cannot produce the same to the court here, the said policy being of date said 26th day of August, A. D. 1870, sealed with the common seal of the defendants, after reciting that the plaintiff had paid to the defendants the sum of two hundred and fifty-nine $\frac{3}{100}$ dollars, for the assurance against loss or damage by fire of certain buildings and chattels, the property of the plaintiff, of the value of thirty-five thousand dollars to the amount hereinafter mentioned, not exceeding upon any one article the sum specified on such article, namely:

$3,333\frac{1}{3}$ on his frame main-barn building, known as No. 1, (meaning No. 1 in defendant' survey,) situate on his farm in the town of Farmington, Conn.

$666\frac{2}{3}$ on his hay and grain, feed and straw contained therein.

8 $3,333\frac{1}{3}$ on cows contained therein, in case of loss; no one cow to be valued over $300.

$500 on mules contained therein, in case of loss; no one mule to be valued over $400.

$333⅓ on frame building occupied as a carriage-house, granary, and chicken-house, situate detached from main building, and known as No. 2,

1874

212.

Supreme Court United States
20th Wallace
Too - End.

estimated, the policy or insurance thereon shall be null and void.

II. That in case any alteration or addition be made in or to any

The answer of Salmon P. Chase, Chief Justice of the Supreme Court of

The t
these w

5

LONDON

Be it
court he
there wa
and figu

6 T

the to

By au
to attacl
The Lon
of Hen
propriet
the king
liament
ance cor
and acc
attorney
viz, L.
the hon
next to

M

7 C

n
whereas
a certai
deed-pol
defenda
cannot
said 26t
the def
fendants
surance
the prop
to the
article t
$3,333
No. 1 in
ton, Cor

8

to be valued over $300,

$500 on mules contained therein, in case of loss; no one mule to be valued over $400.

$333⅓ on frame building occupied as a carriage-house, granary, and chicken-house, situate detached from main building, and known as No. 2, (meaning No. 2 in defendant's survey.)

$133⅓ on carriages and wagons contained therein.

$100 on fowls contained therein.

$400 on frame barn-building No. 3, (meaning No. 3 in defendant's survey,) situate detached from the main building.

$500 on farming utensils contained therein.

$333⅓ on live-stock contained therein.

$666⅔ on frame-building No. 4, (meaning No. 4 in defendant's survey,) adjoining main barn, occupied as an engine-house.

$333⅓ on engine, boiler, shafting, belting, and pulleys contained therein.

$333⅓ on frame-building No. 5, (meaning No. 5 in defendant's survey,) adjoining building No. 4, occupied as a cider-mill.

$8⅓ on cider mill and press contained therein.

Ten thousand three hundred and seventy-five dollars in all.

It was declared and agreed that from the 26th day of August, A. D. 1870, to the 26th day of August, A. D. 1875, the funds and property of the said company should (subject to the conditions and
9 stipulations endorsed on said deed-poll) be subject and liable to pay, re-instate, or make good to the said assured, his heirs, executors, or administrators, such loss or damage as should be occasioned by fire to the property above mentioned, and by said deed insured, not exceeding in each case respectively the sum or sums therein before in said deed-poll and in this declaration severally specified and stated against each property.

And it was in said deed-poll provided, and declared, and agreed, that the defendant should not be liable to make good any loss or damage by fire which should happen or arise by any foreign invasion, insurrection, or civil commotion, or any military or usurped power, or by any explosion, earthquake, or hurricane, and that the policy should remain suspended and be of no effect in respect to any loss or damage which should happen or arise during the period of any of said contingencies.

And it was further agreed that the following conditions endorsed in said deed-poll should be binding upon the parties, as the conditions and stipulations referred to in said policy, viz:

10 *The conditions and stipulations referred to in this policy.*

I. That upon the insurance of any property, whether buildings or goods deposited therein, the party or parties making the same shall specify of what materials the walls and roofs of such buildings are respectively constructed, where situated, and by whom occupied, and whether as private dwellings or how otherwise; whether any manufacture or hazardous trade be carried on, or any hazardous articles be deposited or kept therein, and, if so, shall describe the nature and qualities thereof; whether any steam-engine, furnace, kiln, stove, coakle, or other apparatus whereby heat is produced, (common fireplaces and ovens for domestic use excepted,) be erected on the premises, and, if so, shall give a particular description of the nature and construction thereof, respectively; and if such specification do not truly and circumstantially describe the property, and the several particulars regarding the same as aforesaid, so that the nature and degree of the risk may be justly estimated, the policy or insurance thereon shall be null and void.

II. That in case any alteration or addition be made in or to any

risk on which an insurance has been effected, whether such alteration or addition do consist in the erection on the premises of apparatus for producing heat, or in the introduction of articles more hazardous than may be allowed in the policy, or in change in the nature of the occupation, or in any other manner whatsoever, by which the degree of risk is increased, and a consequent additional premium would be required, and whether such insurance have been effected on the building itself, or on goods, wares, or merchandise deposited therein, and the assured shall not have given notice thereof, respectively, to the said company, or its agent, in writing, and unless such alteration or addition shall be allowed by endorsement on this policy, and such increased premium paid as may be required, such policy or insurance shall be null and void.

III. That houses, buildings, and goods in trust or on commission, intended to be insured, must be so described and declared at the time of effecting such insurance, otherwise the policy will not extend to cover such property.

IV. That no insurance shall be conclusive or binding on this company unless the premium be previously paid thereon; and persons desirous of continuing annual insurances must make their respective payments of the premium on or before the commencement of each and every succeeding year, otherwise such insurance will expire on the respective days on which the payments on such policies become due; and that the only evidence of such payment shall be the printed receipts issued from the office and witnessed by one of the clerks or agents of the company.

V. That this company will not be answerable for any loss or damage by fire occasioned by any invasion, foreign enemy, insurrection, civil commotion, riot, or any military or usurped power whatsoever. Neither will this company be answerable for loss or damage to stock or goods whilst undergoing any process in which the application of fire heat is necessary, nor for loss or damage by explosion of any kind.

VI. That all insurances on farming stock (which comprehends all sort of corn and grain, hay and straw, in barns or stacks, farming-utensils, and live stock) shall be effected under such general description; but this company will not be answerable for any loss or damage happening thereto, occasioned by the natural heating of any of the articles or commodities so comprehended, and included in such insurance.

VII. The books of accounts, written securities, money, bank-notes, and gunpowder, will not be insured or comprehended in any insurance effected by or with this company; nor will any loss or damage, in any case, or of any description, be made good, when more than ten pounds weight of gunpowder shall be deposited or kept on the premises, unless the same be specially allowed in the body of the policy.

VIII. That watches, trinkets, jewels, pearls, plate, musical instruments, pictures, prints, and drawings; china, glass, earthenware, looking-glass plates, medals, coin, sculptures, or other curiosities, will not be included in any insurance effected by this company, or be covered thereby, unless the same be particularly specified in the policy.

IX. The persons who have insured property with this company shall give notice (if required) of any other insurance already made, or which shall afterwards be made elsewhere on the same property; so that a memorandum of such other insurance may be endorsed on the policy or policies effected with this company, otherwise such policy or policies will be void.

X. That upon the death of any person insured by this company,

14 his or her policy and interest therein may be transferred and continued to his or her representative to whom the property insured shall belong, by endorsement on such policy; and persons removing their goods may retain the benefit of their policies, provided the nature and circumstances of the risk in said policies be not altered, and such removal be allowed by the company, by endorsement on their respective policies.

XI. That persons insured by this company sustaining any loss or damage by fire shall forthwith give notice to the directors or secretary of the company, at the office in William street, New York, if in or near New York, or to the agent if elsewhere; and shall, within a reasonable time after such fire shall have happened, deliver to the said directors, their secretary or agent, an accurate and particular account of their loss or damage respectively, as the nature and circumstances of their respective cases will admit, and shall verify the same by solemn declaration or affirmation before a justice of the peace, and shall produce such other evidence as the directors may reasonably require; and until such declaration or affirmation, account, and evidence are produced, the
15 amount of such loss, or any part thereof, shall not be payable or recoverable. And if there appear any fraud or false declaration, or that the fire shall have happened by the procurement or wilful act, means, or connivance of the insured or claimants, he, she, or they shall be excluded from all benefit under this policy.

XII. That in every case of loss or damage for which the said company shall be liable, the same, on being duly proved and the accounts adjusted, shall either be paid immediately, or the said company shall have the option, when the insurance may be on goods, to supply the insured with the like quantity of goods of the same sort and kind, and of equal value and goodness, with those destroyed or damaged by fire; or where the insurance may be on houses and buildings, the said company shall have the option, with all convenient speed, to rebuild, or repair, and re-instate the same, and put them into as good and substantial a condition as they were in at the time when such fire happened.

XIII. That in all cases of insurance this company shall be liable for such rateable proportion only of the loss or damage happening to
16 the subject insured, as the amount insured by this company shall bear to the whole amount insured thereon, without reference to the dates of the different policies, or the insolvency of any or all the other insurance companies.

XIV. That this company will not be liable for any loss or damage to goods contained in the show-windows, when the loss or damage is caused by the light in the window; nor shall the company be liable for loss by theft.

As all by said deed-poll, reference thereto had, will more fully appear; the substance of which deed-poll the plaintiff has herein declared upon, although on account of the defendants' refusal to deliver the same to him he is unable to set the same out more particularly.

And the plaintiff says that in fact he was interested in said property so insured at the time of said insurance, and ever since, until the time of their destruction, and of the loss and damage hereinafter mentioned, to the amount of more than thirty-five thousand dollars, being sole owner thereof.

And the plaintiff says that the premium mentioned in said pol-
17 icy was, on said 26th day of August, duly paid to the defendants.

And the plaintiff in fact further says that after making said policy, and while the same remained and was in full force, to wit, on the

20th day of September, A. D. 1870, said buildings, goods, and chattels were burned down, consumed, and destroyed by fire, which did not happen or arise by any invasion, insurrection, nor civil commotion, or by any military or usurped power, or by any explosion, earthquake, or hurricane, whereby the plaintiff then sustained a loss and damage to a large amount, to wit, to the amount of ten thousand three hundred and seventy-five dollars, the amount insured against by the defendants by said policy on the said buildings and chattels so burnt, as aforesaid, and in fact to a much larger amount, viz, to the amount of thirty-five thousand dollars.

Of all which the defendants afterwards, to wit, on the day and year last aforesaid, had notice, and of the precise loss and damage to the plaintiff, the defendants afterwards, on the 29th day of September, A. D. 1870, had proof made and verified, as required of the plaintiff
18 by said conditions endorsed on said policy.

And the plaintiff further says that he has in all things conformed himself to and observed all and *and* singular the articles, conditions, and stipulations, matter and things, in the said deed-poll or policy contained, which, on his part, were to be performed and observed, according to the tenor and effect, true intent and meaning of the said deed-poll or policy; and although the funds and property of the said company are more than sufficient to satisfy and make good the plaintiff for his loss as aforesaid.

And, although a long time, to wit, more than sixty days have elapsed since the defendants had notice of said fire and proof of said loss, yet, the plaintiff in fact says that the said loss and damage have not been paid to him in money, nor have the defendants supplied the plaintiff with the like quantity of chattels and property of the same sort and kind, and of equal value and goodness with those destroyed by fire; nor have they rebuilt or re-instated or put in the same or similar condition the buildings so insured, as aforesaid, contrary to the tenor and effect, true intent,
19 and meaning of the said deed-poll or policy, and of the covenant of the defendants in their behalf, so made as aforesaid.

And so the plaintiff in fact says that the defendants, although often requested so to do, have not kept the said covenant so by them made as aforesaid, but have broken the same, and to keep the same with the plaintiff have hitherto wholly neglected and refused, and still so neglect and refuse, to the plaintiff's damage eleven thousand dollars.

2nd count. And the plaintiff further says, in a plea of the case, in this his second count, being for the same cause of action as declared in the preceding count in covenant, and as are the succeeding counts in this declaration, that heretofore, to wit, on the 26th day of August, A. D. 1870, he was the owner absolute of certain buildings and certain chattels, viz, forty mules, forty cows, two hundred fowls, two hundred ton' of hay, two hundred tons of straw, twenty ploughs, and forty rakes, hoes, shovels, and other farming implements and tools, ten mowing-machines, ten reapers, ten raking-machines, and ten other farm-
20 ing machines, one engine, one boiler, and certain shafting connected with it, one cider-press; all situate in the town of Farmington in said Hartford County, all of the value of fifty thousand dollars; and that, on said 26th day of August, the defendants, being an insurance corporation duly qualified to make assurance against fire upon property in the State of Connecticut, in consideration that the plaintiff then and there agreed to pay to the defendants, when thereunto requested, the sum of two hundred and fifty-nine and $\frac{34}{100}$ dollars, as a premium for the defendant's insurance, herein-

after mentioned, agreed and promised the plaintiff to insure and did insure all and singular the property aforesaid, to the amount of ten thousand three hundred and seventy-five dollars, said amount of liability to be distributed upon said articles, as explicitly set forth in the first count of this declaration, against loss and damage by fire, for a period of five years from said 26th day of August, A. D. 1870.

And the plaintiff says that on the 20th day of September, A. D. 1870, the said property and all and several the items thereof were consumed by fire.

And the plaintiff says that he has been always ready to pay two hundred and fifty-nine $\frac{34}{100}$ dollars, and has offered to do so, but that the
21 defendants have declined and still declined to receive the same.

And the plaintiff says that hereupon, to wit, on the said 20th day of September, the defendants became liable to pay the plaintiff the said sum of ten thousand three hundred and seventy-five dollars, in consideration whereof the defendants, the day and year last aforesaid, promised the plaintiff to pay him the said sum of ten thousand three hundred and seventy-five dollars. But the plaintiff says the defendant, his said promise not regarding, has wholly failed, neglected, and refused so to do, to the damage of the plaintiff the sum of eleven thousand dollars.

3d count. And the plaintiff further says that on the 26th day of August, A. D. 1870, he was possessed as absolute owner of five certain other buildings, and of certain other chattels, four mules, forty head of horned stock, two hundred fowls, ten mowing-machines, ten reapers, ten ploughs, one hundred farming implements, one steam-engine, one boiler and shafting, two hundred ton of hay, one hundred tons of straw, and one hundred tons of grain, all of the value of fifty
22 thousand dollars, and all located in Farmington aforesaid; that on said 26th day of August, the defendants, in consideration that the plaintiff agreed to pay to them the sum of two hundred and fifty-nine $\frac{34}{100}$ dollars, on the first day of October, A. D. 1870, agreed and promised to insure, and did insure the plaintiff against all loss and damage by fire to his property aforesaid, in the sum of ten thousand three hundred and seventy-five dollars, in such particular limitations per article as is fully set forth in the first count of this declaration, for the term of five years from the said 26th day of August, A. D. 1870.

And the plaintiff says that afterwards, and within the said period of five years, viz, on the 20th day of September, A. D. 1870, the said property was wholly lost and consumed by fire.

And the plaintiff says that on the said first day of October, A. D. 1870, he offered to pay to the defendants the said two hundred and fifty-nine $\frac{34}{100}$ dollars, and ever since has been ready and willing to pay said sum, but the plaintiff says that defendants on said first day of October declined to receive said money, and ever since have declined to receive it.

23 And the plaintiff says that the defendants then, on said last named day, became liable to pay the plaintiff the said sum of ten thousand three hundred and seventy-five dollars, and in consideration thereof then promised the plaintiff to pay him the sum of ten thousand three hundred and seventy-five dollars, when thereunto requested by the plaintiff.

And the plaintiff says that the defendants have wholly refused and neglected to pay the same and to fulfill his promises and undertakings aforesaid, to his damage eleven thousand dollars.

4th count. And the plaintiff further declares and says, in a plea of

the case, that the defendants, on the 26th day of August, A. D. 1870, were and ever since have been an association, organized according to the laws of the Kingdom of Great Britain and Ireland, for making insurances upon property, and as such foreign association authorized and empowered by the statutes of this State to effect and make insurances and contracts of insurance against fire upon buildings and property within the State of Connecticut, and with power to sue and be sued.

24 And the plaintiff says that on the said 26th day of August he was the absolute owner of five certain buildings and of two hundred tons of hay, one hundred tons of straw, one hundred tons of rye, four carriages, two mowing-machines, two reapers, two tedders, five ploughs, one hundred other farming implements, and one steam-engine, one boiler and shafting, one cider-mill and press, forty head of horned stock, and four mules; all of the value of fifty thousand dollars, and all situate in Farmington aforesaid; that the defendant, on said day last named, in consideration that the plaintiff then agreed to pay to the defendants, when thereto by the defendants requested, a certain insurance premium, viz, the sum of two hundred and fifty-nine $\frac{34}{100}$ dollars, undertook and faithfully promised to insure, and did insure, the plaintiff against loss or damage by fire to his the plaintiff's property aforesaid to the amount of ten thousand three hundred and seventy-five dollars in the manner following, viz:

$3,333\frac{1}{3}$ (three thousand three hundred and thirty-three $\frac{33}{100}$ dollars) upon the plaintiff's main frame barn building, known as No. 1, (meaning No. 1, as designated by defendants in their survey of the premises,) situate on his farm in the town of Farmington, Conn.

25 $666\frac{2}{3}$ (six hundred and sixty-six $\frac{66}{100}$ dollars) upon plaintiff's hay, grain, feed, and straw contained therein.

$3,333 (three thousand three hundred and thirty-three $\frac{33}{100}$ dollars) on cows containd therein.

$500 (five hundred dollars) on mules contained therein.

$333\frac{1}{3}$ (three hundred and thirty-three $\frac{33}{100}$ dollars) on frame building occupied as a carriage-house, granary, and chicken-house, situate detached from main building, and known as No. 2, (meaning No. 2 in defendant's survey of the premises.)

$133\frac{1}{3}$ (one hundred and thirty-three $\frac{33}{100}$) on carriages and wagons contained therein.

$100 (one hundred dollars) of fowls contained therein.

$400 (four hundred dollars) in frame barn building No. 3, (meaning No. 3 upon defendant's survey of premises,) situate detached from main building.

$500 (five hundred dollars) on farming utensils contained therein.

$333\frac{1}{3}$ (three hundred and thirty-three $\frac{33}{100}$ dollars) on live stock contained therein.

$66\frac{2}{3}$ (sixty-six $\frac{2}{3}$ dollars) on frame building No. 4, adjoining main barn, occupied as an engine-house.

$333\frac{1}{3}$ (three hundred and thirty-three $\frac{33}{100}$ dollars) on engine, boiler, shafting, belting, and pulleys contained therein.

26 $333\frac{1}{3}$ (three hundred and thirty-three and $\frac{1}{3}$) on frame building No. 5, adjoining building No. 4, occupied as a cider-mill.

$6\frac{1}{4}$ (six $\frac{25}{100}$ dollars) upon cider-mill and press contained therein.

For the term of five years from said August 26th, A. D. 1870.

And the defendants then, on said 26th day of August, A. D. 1870, agreed to prepare and deliver to the plaintiff a policy of insurance, in writing, in conformity with the terms of their said insurance, unless the defendants should afterwards decline this said risk; and in case of the

defendants declining said risk, defendants agreed in consideration of the aforesaid to notify the insured, and to release him from his agreement to pay said premium; and it was then expressly agreed by the defendants, in consideration aforesaid, that the insurance meantime should be binding on the company.

And the plaintiff says, that on the 20th day of September, the said buildings and the said chattels of the plaintiff by said company insured, as aforesaid, were wholly consumed and destroyed by fire, accidentally and without fault of the plaintiff, to the damage of the plaintiff
27 forty thousand dollars, of which the defendants had notice, on the 21st day of September, A. D. 1870. The plaintiff says that on the 29th day of September, A. D. 1870, the plaintiff delivered to the defendants an explicit and full account of his loss and damage to said insured property; and the plaintiff says that he has at all times been ready and willing to pay said premiums to defendants, when thereto requested, and has frequently offered so to do, but the defendants have refused wholly and always to accept the same, and have never requested him to make such payment.

And the plaintiff further says that the defendants have never made him, the plaintiff, good for his loss and damage by fire, as aforesaid; that they have never rebuilt nor re-instated his said buildings, or any part thereof; nor have they supplied him with any chattels like the chattels aforesaid destroyed at said fire, nor have they in any way re-imbursed the plaintiff for his said damage. And therefore the defendants became liable to pay the plaintiff the sum of eleven thousand dollars, and in consideration of the foregoing, on the day of , A. D. 1870, undertook and promised the plaintiff to pay him eleven thousand dollars when thereto requested.

28 5th count. And the plaintiff further says that the defendants, on the 26th day of August, A. D. 1870, were an organization and company associated according to the laws of Great Britain and Ireland, and empowered to make contracts of insurance and relating to insurances, and authorized by the laws of this State to make and effect insurances and contracts of insurance within this State upon property therein; that on said last-named day plaintiff was possessed of five certain buildings and of certain chattels contained therein, viz, two hundred tons of hay, one hundred tons of grain, one hundred tons of straw, forty head of horned stock, four mules, two hundred fowls, five carriages, six sleighs, two mowing-machines, and twenty other farming-machines, and twenty farming-tools, one engine, one boiler, with shafting and belting connecting, one cider mill and press, all of the value of fifty thousand dollars, and all situated in said Farmington.

And the plaintiff says that on the day last aforesaid, in consideration that the plaintiff then agreed with the defendants to pay them, when thereafter by them requested, two hundred and fifty-nine $\frac{34}{100}$ dollars, and that the plaintiff would become indebted to the defendants
29 in the sum of two hundred and fifty-nine $\frac{34}{100}$ dollars, the defendants then agreed with, undertook, and promised the plaintiff to make and execute and deliver to the plaintiff a certain policy of insurance insuring the plaintiff, and to insure the plaintiff within a reasonable time thereafter, and so soon as such a policy could be conveniently and reasonably prepared, against loss or damage by fire to the property of the plaintiff aforesaid, for the period of five years from said 26th day of August, A. D. 1870, to the amount of ten thousand three hundred and seventy-five dollars, said amount to be distributed over said articles in the manner and to the extent and amount per article, as in the count

in this declaration immediately preceding this count is precisely declared. And the plaintiff says that on the 20th day of September, A. D. 1870, the said buildings and property were wholly destroyed and consumed by fire, without fault of the plaintiff, to the damage of the plaintiff fifty thousand dollars.

And the plaintiff further says that on said 26th day of August, he became indebted to the defendants in the sum of two hundred and
30 fifty-nine $\frac{34}{100}$ dollars; and that he has always been willing and ready to pay to the defendants said two hundred and fifty-nine $\frac{34}{100}$ dollars, when he should be thereto requested; and that he has frequently offered so to do, but that the defendants have always wholly refused to accept the same.

And the plaintiff further says that on the 21st day of September, A. D. 1870, he gave notice to defendants of said loss, and on the 29th day of September gave full account thereof, verified by oath.

And the plaintiff further says that the defendants, the said promise and undertakings not regarding, have always wholly failed and neglected to insure said property, and to make, execute, and deliver to the plaintiff a policy of insurance, insuring the plaintiff against loss and damage by fire to his property aforesaid in the manner aforesaid, and to the amount aforesaid, although a reasonable time for said making said policy and executing and delivering the same, and for insuring the plaintiff, as aforesaid, has long since elapsed, and although the defendants have been often thereto requested and demanded and particularly on the 13th day of September, A. D. 1870, to the damage of the
31 plaintiff eleven thousand dollars.

And the plaintiff further says that the defendants, on the 2d day of January, A. D. 1871, were indebted to the plaintiff in the further sum of eleven thousand dollars, for so much money before that time had and received by the defendant to and for the use of the plaintiff.

And also in the further sum of eleven thousand dollars, for so much money before that time paid, laid out, and expended by the plaintiff for the defendants, at the special instance and request of the defendant.

And also in the further sum of eleven thousand dollars, for so much money before that time lent and advanced to the defendants by the plaintiff at the special instance and request of the defendants.

And also in the further sum of eleven thousand dollars, for goods, wares, and merchandise before that time sold and delivered to the defendants by the plaintiff at the special instance and request of the defendants.

And also in the further sum of eleven thousand dollars, for so much money found to be due from the defendants to the plaintiff upon an account then and there stated between them.

32 And also in the further sum of eleven thousand dollars, for work and labor done and performed by the plaintiff for the defendants, at the special instance and request of the defendants; and being so indebted, the defendants afterwards, to wit, on the day and year last aforesaid, at aforesaid, in consideration thereof, undertook and faithfully promised the plaintiff to pay to him said several sums of money when they should be thereto afterwards requested.

Yet the plaintiff says that the defendants, their said several promises aforesaid not regarding, have never performed the same, though often requested and demanded; all of which is to the damage of the plaintiff the sum of twelve thousand dollars.

And for the recovery thereof, with just costs, the plaintiff brings this suit.

(Plaintiff is recognized in the sufficient sum of $100, to prosecute, &c.)

Hereof fail not, but of this writ, with your doings thereon, make due return according to law.

Dated at Hartford this 4th day of January, A. D. 1871.

HENRY C. ROBINSON,
Justice of the Peace.

33 NEW HAVEN COUNTY, *ss:*

NEW HAVEN, *January 11th*, 1871.

Then I left a true and attested copy of this writ with L. W. Sperry, attorney and agent for this State for the within-described insurance company, in said New Haven.

Attest:

WESTEFL RUSSELL,
Deputy Sheriff of New Haven County.

Fees:

Travel	$8 00
Copy	10 00
Service	12
	$18 12

To the superior court of the State of Connecticut:

The petition of the London and Liverpool and Globe Insurance Company, a company duly organized, located, and having its principal office in England, in the kingdom of Great Britain, and its chief auxiliary office for the United States in the city of New York, and being an alien, in manner, &c., as is set forth in the plaintiff's declaration, in the suit hereinafter named, respectfully shows, that an action has been commenced against your petitioner in the superior court aforesaid by the service of a writ and summons upon the duly
34 authorized attorney of your petitioner, in said Connecticut, in which action Samuel C. Colt, of said Hartford, is plaintiff, and your petitioner is defendant; that the amount in controversy, in said action, exceeds five hundred dollars, exclusive of costs, the plaintiff seeking in and by said action to recover of your petitioner, defendant therein, the sum of ten thousand three hundred and seventy-five dollars, ($10,375) upon an alleged agreement which the plaintiff claims was made by your petitioner, insuring, or agreeing to insure, the plaintiff, as he says, against loss or damage by fire to certain property named and described in the plaintiff's declaration, which property, said plaintiff alleges, has been destroyed by fire, as is set forth in said declaration, and which agreement, and all or any agreement relating thereto, the defendant denies the making of, and avers that it (the said defendant) is not liable in any sum on account of such alleged agreement.

And your petitioner further shows, that its appearance has not yet been entered in said action, and said action is pending and undetermined.

And your petitioner further shows that your petitioner is a compa-
35 ny organized under the laws of Great Britain, and having a principal auxiliary office at New York, aforesaid, and that your petitioner is an alien, and not a citizen of the State of Connecticut; and that, as

your petitioner is informed and believes, the plaintiff in said suit is a citizen of the State of Connecticut, and that the place for the trial of said action, as stated in said writ, is Hartford, in the county of Hartford and State of Connecticut, to wit, in the district of Connecticut.

Wherefore your petitioner prays that the said action may be removed for trial from the said superior court ot the State of Connecticut into the next circuit court of the United States, to be held at the city of New Haven, in the district of Connecticut.

Dated at Hartford, Conn., this 13th day of March, A. D. 1871.

London, Liverpool and Globe Insurance Company,

By F. CHAMBERLIN,

Att'y.

STATE OF CONNECTICUT,

City and county of Hartford:

36 F. Chamberlin, being duly sworn, says that he resides in the city of Hartford, and is the attorney of the London, Liverpool and Globe Insurance Company, the petitioner in the foregoing; that said petitioner is a fire insurance company, organized under and by virtue of the laws of the Kingdom of Great Britain, doing business in the different States of this Union, and located and having its principal office in the city of New York; that he has read the foregoing petition, and knows its contents; and that the same is true of his own knowledge, except as to those matters stated upon information and belief; and, as to those matters, he believes it to be true.

F. CHAMBERLIN.

STATE OF CONNECTICUT,

County of Hartford, ss:

HARTFORD, *March 11th*, 1871.

Personally appeared F. Chamberlin, to me known as the attorney of the London, Liverpool and Globe Insurance Company, and made oath to the above certificate by him subscribed before me.

THEODORE LYMAN,

Justice of the Peace.

37 Know all men by these presents that the London and Liverpool and Globe Insurance Company, as principals, and F. Chamberlin as surety, are held and firmly bound unto Samuel C. Colt, of Hartford, Conn., in twenty thousand dollars.

Whereas said Samuel C. Colt has instituted a suit at law against the Liverpool and London and Globe Insurance Company, returnable to the superior court of the State of Connecticut, at the March term thereof for the county of Hartford, in which the said Colt seeks to recover the sum of $10,375, upon an insurance contract set up and alleged in said suit; and whereas the said insurance company has filed its petition setting forth that said Colt is a citizen of the State of Connecticut, and that the said insurance company is an alien, and asking for a removal and transfer of said suit from said superior court to the circuit court of the United States:

Now if the said petitioner, the London and Liverpool and Globe Insurance Company, shall enter said suit and copies of the proceedings therein in the said circuit court for the district of Connecticut on
38 the first day of the session thereof, next to be holden at New Haven, in and for said district of Connecticut, on the fourth Tuesday of April next; now if said company shall enter said suit on said first day,

&c., then this obligation shall be void, otherwise the said principal and surety are held and firmly bound to pay to said Colt the sum of twenty thousand dollars, on demand.

Witness our hands and seals the 11th day of March, A. D. 1871.

London, Liverpool and Globe Insurance Company, [L. S.]
By F. CHAMBERLIN, *Att'y.*
F. CHAMBERLIN, *Surety.* [L. S.]

STATE OF CONNECTICUT,
County of Hartford, ss:

CLERK'S OFFICE, *Superior Court.*

The above and foregoing a true copy of the original petition, service, motion, and bond; and I also certify that said suit (of Samuel C. Colt *vs.* the London and Liverpool and Globe Insurance Company) was, on motion of counsel for the defendants, ordered to be removed to the United States circuit court, at its next session in New Haven on the fourth Tuesday of April, A. D. 1871.

39 In testimony whereof I do hereunto subscribe my name and affix the seal of said superior court at Hartford, this 24th day of April, A. D. 1871.

CHAUNCEY HOWARD,
Clerk of the Superior Court.

[SEAL OF SUPERIOR COURT.]
[5-cent rev. stamp cancelled.]

40 And at the term of said court in which said record was filed as aforesaid, the plaintiff, by H. C. Robinson and R. D. Hubbard, attorneys, duly appeared, and the defendants, by F. Chamberlain and N. Shipman, duly appeared, and said cause being duly continued on the 30th day of June, A. D. 1871, to which time they had leave to implead to the plaintiff's declaration, the defendants filed in court their plea in the words and figures following, viz:

41 U. S. circuit court in vacation after April term, 1871.

SAMUEL C. COLT,
vs.
LONDON, LIVERPOOL & GLOBE INS. CO.

And now the said defendant comes and defends, &c., when, &c., and as to the first count said defendant says the writing in *in* said count of said declaration mentioned is not the deed of said defendants, and therefore said def't puts itself on the count'y.

London, Liverpool and Globe Ins. Company,
By F. CHAMBERLIN, *Att'y.*

And now the said defendants come and defend, &c., and as to the second count in said declaration, and as to each and all the succeeding counts therein, said defendants say they did not promise in manner and form as the plaintiff hath above complained against them, and thereof they put themselves upon the count'y.

London, Liverpool & Globe Insurance Company,
By F. CHAMBERLIN,
Their Att'y.

42 And thereafter the said cause was duly continued from time to time, the said parties appearing as aforesaid, until this present

term of said court, when the parties again appeared as aforesaid and the plaintiff filed in the court additional counts to his declaration in the words and figures following, viz:

43 6th count. And the plaintiff further declares and says in a plea of the case, that the defendants, on the 26th day of August, A. D. 1870, were, and ever since have been, an association, organized according to the laws of the Kingdom of Great Britain and Ireland, for making insurance upon property, and as such foreign association authorized and empowered by the statutes of this State to effect and make insurance and contracts of insurance against fire upon buildings and property within the State of Connecticut, and with power to sue and be sued.

And the plaintiff says that on the said 26th day of August, he was the absolute owner of five certain buildings and of two hundred tons of hay, one hundred tons of straw, one hundred tons of rye, four carriages, two mowing-machines, two reapers, two tedders, five ploughs, one hundred other farming implements, and one steam-engine, one boiler and shafting, one cider-mill and press, forty head of horned stock, and four mules, all of the value of fifty thousand dollars and all situate in Farmington, aforesaid.

That the defendant on said day last named, in consideration that the plaintiff then agreed to pay to the defendants on the first day of

44 October, 1870, being thereto by the defendants requested, a certain insurance premium, viz, the sum of two hundred and fifty-nine $\frac{34}{100}$ dollars, undertook and faithfully promised to insure and did insure the plaintiff against loss or damage by fire to his the plaintiff's property aforesaid, to the amount of ten thousand three hundred and seventy-five dollars, in the manner following, viz:

$3,333$\frac{1}{3}$ (three thousand three hundred and thirty-three $\frac{33}{100}$ dollars) upon plaintiff's main frame barn building known as No. 1, meaning No. 1 as designated by defendants in their survey of the premises situate on his farm in the town of Farmington, Conn.

666\frac{2}{3}$ (six hundred and sixty-six $\frac{66}{100}$ dollars) upon plaintiff's hay, grain, feed, and straw contained therein.

$3,333$\frac{1}{3}$ (three thousand three hundred and thirty-three $\frac{33}{100}$ dollars) on cows contained therein.

$500 (five hundred dollars) on mules contained therein.

333\frac{1}{3}$ (three hundred and thirty-three $\frac{33}{100}$ dollars) on frame building occupied as a carriage-house, granary, and chicken-house, situate detached from main building, and known as No. 2, meaning No.

45 2 in defendant's survey of the premises.

133\frac{1}{3}$ (one hundred and thirty-three $\frac{33}{100}$ dollars) on carriages and wagons contained therein.

$100 (one hundred dollars) on fowls contained therein.

$400 (four hundred dollars) on frame barn building No. 3, (meaning No. 3 upon defendant's survey of the premises,) situate detached from main building.

$500 (five hundred dollars) on farming utensils contained therein.

333\frac{1}{3}$ (three hundred and thirty-three $\frac{33}{100}$ dollars) on live-stock contained therein.

66\frac{2}{3}$ (sixty-six $\frac{66}{100}$ dollars) on frame building No. 4, adjoining main barn occupied as an engine-house.

333\frac{1}{3}$ (three hundred and thirty-three $\frac{33}{100}$ dollars) on engine-boiler, shafting, belting, and pulleys contained therein.

333\frac{1}{3}$ (three hundred and thirty-three $\frac{33}{100}$ dollars) on frame building No. 5, adjoining building No. 4, occupied as a cider-mill.

6\frac{1}{4}$ (six $\frac{25}{100}$ dollars) upon cider-mill and press contained therein.

For the term of five years from said August 26th, A. D. 1870.

46 And the defendants then, on said 26th day of August, A. D. 1870, agreed to prepare and deliver to the plaintiff a policy of insurance in writing in conformity with the terms of their said insurance, unless the defendants should afterwards decline the said risk; and in case of the defendants declining said risk, defendants then agreed in consideration aforesaid to notify the insured, and to release him from his agreement to pay on the said 1st day of October, 1870, said premium as aforesaid, and it was then expressly agreed by the defendants, in consideration aforesaid, that the insurance mentioned should be binding on the company.

And the plaintiff says that the said company have never notified him that they declined the risk, nor have the defendants ever delivered to him any written policy although often thereto requested by the plaintiff.

And the plaintiff says that on the 20th day of September the said buildings and the said chattels of the plaintiff, by said company insured as aforesaid, were wholly consumed and destroyed by fire accidentally and without fault of the plaintiff, to the damage of the plaintiff

47 forty thousand dollars, of which the defendants had notice on the 21st day of September, A. D. 1870. The plaintiff says that on the 29th day of September, A. D. 1870, the plaintiff delivered to the defendants an explicit and full account of his loss and damage to said insured property.

And the plaintiff says that he has at all times since the 1st day of October, A. D. 1870, been ready and willing to pay said premium to the defendants in conformity with his said agreement, and has frequently offered so to do, especially on the 1st day of October, A. D. 1870, but the defendants have refused wholly and always to accept the same, and have never requested him to make such payment.

And the plaintiff further says that the defendants have never made him, the plaintiff, good for his loss and damage by fire, as aforesaid; that they have never re-built nor re-instated his said buildings or any part thereof, nor have they supplied him with any chattels like the chattels aforesaid destroyed at said fire, nor have they in any way re-imbursed the plaintiff for his said damage.

And thereupon the defendants became liable to pay the plaintiff the sum of eleven thousand dollars, and in consideration of

48 the foregoing on the day , A. D. 1870, undertook and promised the plaintiff to pay him eleven thousand dollars when thereto requested.

7th count. And the plaintiff further declares and says in a plea of the case, that the defendants, on the 14th day of September, A. D. 1870, were, and ever since have been, an association organized according to the laws of the Kingdom of Great Britain and Ireland for making insurance upon property, and as such foreign association authorized and empowered by the statutes of this State to effect and make insurance and contract of insurance against fire upon buildings and property within the State of Connecticut, and with power to sue and be sued.

And the plaintiff says that on the said 14th day of September he was the absolute owner of five certain buildings and of two hundred tons of hay, one hundred tons of straw, one hundred tons of rye, four carriages, two mowing-machines, two reapers, two tedders, five ploughs, one hundred other farming implements, and one steam-engine, one boiler and shafting, one cider-mill and press, forty head of horned stock, and

49 four mules, all of the value of fifty thousand dollars, and all situate in Farmington aforesaid.

That the defendant, on said day last named, in consideration that the

plaintiff then agreed to pay to the defendants on the first day of October, 1870, being thereto by the defendants requested, a certain insurance premium, viz, the sum of two hundred and fifty-nine $\frac{34}{100}$ dollars, undertook and faithfully promised to insure, and did insure, the plaintiff against loss or damage by fire to his the plaintiff's property as aforesaid, to the amount of ten thousand three hundred and seventy-five dollars, in the manner following, viz:

$3,333$\frac{1}{3}$ (three thousand three hundred and thirty-three $\frac{33}{100}$ dollars) upon plaintiff's main frame barn building known as No. 1, (meaning No. 1, as designated by defendants in their survey of the premises,) situate on his farm in the town of Farmington, Conn.

666\frac{2}{3}$ (six hundred and sixty-six $\frac{66}{100}$ dollars) upon plaintiff's hay, grain, feed, and straw, contained therein.

$3,333$\frac{1}{3}$ (three thousand three hundred and thirty-three $\frac{33}{100}$ dollars) on cows contained therein.

$500 (five hundred dollars) on mules contained therein.

333\frac{1}{3}$ (three hundred and thirty-three $\frac{33}{100}$ dollars) on frame building, occupied as a carriage-house, granary, and chicken-house, situate
50 detached from main building, and known as No. 2, meaning No. 2 in defendant's survey of the premises.

133\frac{1}{3}$ (one hundred and thirty-three $\frac{33}{100}$ dollars) on carriages and wagons contained therein.

$100 (one hundred dollars) on fowls contained therein.

$400 (four hundred dollars) on frame barn building No. 3, (meaning No. 3 upon defendant's survey of the premises,) situate detached from main building.

$500 (five hundred dollars) on farming utensils contained therein.

333\frac{1}{3}$ (three hundred and thirty-three $\frac{33}{100}$ dollars) on live stock contained therein.

66\frac{2}{3}$ (sixty-six $\frac{65}{100}$ dollars) on frame buildings No. 4, adjoining main barn, occupied as an engine-house.

333\frac{1}{3}$ (three hundred and thirty-three $\frac{33}{100}$ dollars) on engine, boiler, shafting, belting, and pulleys contained therein.

333\frac{1}{3}$ (three hundred and thirty-three $\frac{33}{100}$ dollars) on frame building No. 5, adjoining building No. 4, occupied as a cider-mill.

6\frac{1}{4}$ (six $\frac{25}{100}$ dollars) upon cider-mill and press contained therein—
for the term of five years from said 14th day of September, A.
51 D. 1870; agreed to prepare and deliver to the plaintiff a policy of insurance in writing, in conformity with the terms of their said insurance, unless the defendants should afterwards decline the said risk, and in case of the defendants declining said risk, defendants then agreed in consideration aforesaid to notify the insured, and to release him from his agreement to pay on the 1st day of October, 1870, said premium as aforesaid; and it was then expressly agreed by the defendants, in consideration aforesaid, that the insurance meantime should be binding on the company.

And the plaintiff says that the said company have never notified him that they declined the risk; nor have the defendants ever delivered to him any written policy, although often thereto requested by the plaintiffs.

And the plaintiff says that on the 20th day of September the said buildings and the said chattels of the plaintiff, by said company insured as aforesaid, were wholly consumed and destroyed by fire, accidentally
and without fault of the plaintiff, to the damage of the plaintiff
52 forty thousand dollars, of which the defendants had notice on the 21st of September, A. D. 1870.

The plaintiff says that on the 29th day of September, A. D. 1870, the plaintiff delivered to the defendants an explicit and full account of his loss and damage to said insured property.

And the plaintiff says that he has at all times since the 1st day of October, 1870, been ready and willing to pay said premium to the defendants in conformity with his said agreement, and has frequently offered so to do, especially on the first day of October, A. D. 1870, but the defendants have refused wholly and always to accept the same, and have never requested him to make such payment.

And the plaintiff further says that the defendants have never made him, the plaintiff, good for his loss and damage by fire as aforesaid; that they have never rebuilt nor re instated his said buildings, or any part thereof; nor have they supplied him with any chattels like the chattels aforesaid destroyed at said fire, nor have they in any way re-im-
53 bursed the plaintiff for his said damage. And thereupon the defendant became liable to pay the plaintiff the sum of eleven thousand dollars; and, in consideration of the foregoing, on the day of , A. D. 1870, undertook and promised the plaintiff to pay him eleven thousand dollars when thereto requested.

54 Wherefore the marshal of said district of Connecticut is commanded that he cause to come here immediately twelve, &c., by whom, &c., and who, &c., to recognize, &c., because as well, &c.

And the jurors of said jury for this purpose, by the marshal impanneled and returned, viz, Luzon W. Clark, Hira Case, Philo Dickerman, William F. Crittenden, Giles O'Keeler, David A. Cowles, Henry Tuttle, Robert Chapman, Elisha Payne, Roswell Brotherwell, J. Sherman Bird, Jesse Hall, being called, came, who, being elected, tried, and sworn to speak the truth of and concerning the premises, made and returned their verdict in the words and figures following, viz:

Circuit court, second circuit, April T., 1872.

UNITED STATES OF AMERICA,
District of Connecticut, ss:

SAMUEL C. COLT
vs.
LONDON, LIVERPOOL & GLOBE INS. CO. } Action of assumpsit, &c.

In this case the jury finds the issue for the plaintiff to recover f the defendants the sum of six thousand five hundred seventy $\frac{55}{100}$ dollars damages, together with their costs.

Which said verdict being accepted and ordered to be recorded by the court, subject to the opinion of the court upon the questions of
55 law, it is considered and adjudged by the court here this 24th day of April, A. D. 1872, that the plaintiff do recover of the defendants the sum of six thousand five hundred and seventy $\frac{55}{100}$ dollars ($6,570.55) damages, and his costs, taxed and allowed at the sum of one hundred and two $\frac{90}{100}$ dollars, and have execution therefor.

And on the 29th day of November, A. D. 1872, and within the time limited by law, the defendants filed in court their bill of exceptions by order of court as of the April term of said court, which bill of exceptions was, and is, in the words and figures following, viz:

56 SAMUEL C. COLT
vs.
LONDON, LIVERPOOL AND GLOBE INSURANCE Company.

Bill of exceptions filed by the defendants at the April term of said court, A. D. 1872, upon the trial to the jury of the above-entitled cause.

Be it remembered that in the trial of the above-entitled cause the defendants excepted to the refusal of this court to instruct the jury in matter of law as requested by the defendant, and to such refusal the defendants then and there excepted, and file this bill of exceptions.

It appeared in evidence at the time of the undertakings on which this suit was founded, the defendants were doing business in the State of Connecticut as a fire insurance company, and that Nevers and Havens were at the time of the several transactions hereinafter related the agent, in the city of Hartford and its vicinity, of the defendants for the transaction of their business of fire insurance, with such powers as are expressed in the documents hereinafter mentioned or are
57 legally to be inferred or implied from all the facts herein stated.

The instrument by which they were appointed agents was in the following language. (See Exhibit A.)

The defendants are organized under and by virtue of the laws of Great Britain and have their principal office in London. George William Gordon, residing in the city of Boston, was their managing agent in this country for the New England States, and with him Nevers and Havens corresponded touching all the affairs of their agency.

At the time of their appointment, and from time to time, they were supplied by the New England managers of the defendant association with blank binders, so called, for use in their business, of form like the one hereto annexed, marked B. These the agents continued to use during the whole time of their agency, with approval of the managers.

On the 26th of August, 1870, the said Nevers and Havens, as
58 agents of the defendants, made proposals to the plaintiff to insure the premises belonging to him described in the plaintiff's declaration. The plaintiff thereupon made an application for insurance of said premises for the sum of $10,325 against fire, for a term of five years from August 26th, 1870, to be placed in the defendant company.

The agents approved said application and risk, and there was then completed a parol contract of insurance with said Nevers & Havens, agents as aforesaid, to insure said property with the defendant company, for the term of five years from said date, the insurance to be binding on and from that date, at a premium then fixed and agreed to; that credit was given for the payment of the premium till the first of October then next, and that it was agreed that a policy should be made, and that Nevers and Havens should keep the policy in their possession for the plaintiff till the first of October, for the convenience of the plaintiff, he claiming that he had no safe and convenient place in which to keep papers of that character.

59 The property was destroyed by fire, without fault of the plaintiff, on the 20th day of September, 1870, and proofs of loss were duly made and presented.

On the 22d day of September, 1870, (the agents being absent on the 21st,) the agents, on request of the plaintiff for a policy, filled out and executed the written contract hereto annexed, marked C.

The plaintiff called the day after the fire for the same, and the agents then agreed to hand it to him, but subsequently, under instructions from the said Gordon, declined to do so.

Neither said Gordon or principals had knowledge of the negotiations or contract to insure till after the fire, and no communication had been made to them in regard to the risk.

No notice of the company's declining the risk was given to the
60 plaintiff, nor any offer to release him from his obligations to pay the premium.

Said contract C was retained by the agents and produced on the trial upon the call of the plaintiff.

It was admitted, for the purposes of this trial, that the defendants are and were a corporation.

The plaintiff tendered the agent premium on September 22d, at the time he demanded the policy of insurance as aforesaid, and again on the first day of October.

The testimony on both sides being closed, the counsel for the defendant requested the court in its charge to instruct the jury according to the following propositions, and each and every of them:

1st. That said Nevers & Havens had no power, under the limited authority conferred upon them as aforesaid, to give credit for the premiums till October 1st, or in any manner or to any extent to
61 waive the prepayment thereof according to the conditions and stipulations of defendant's policies in the plaintiff's declaration.

2d. That said Nevers and Havens had no power to bind the defendant company except by written certificates substantially in the form of paper B.

3d. That said Nevers & Havens had no power to bind the defendants by any contract of insurance except during correspondence only, on risks approved and submitted by them.

4th. That the parol contract of insurance for five years, attempted to be made by said Nevers & Havens, was void.

5th. That said Nevers and Havens had no power to bind the defendants by making out the "binder," a copy whereof is hereto annexed, marked C, after the fire, inasmuch as there was previously no valid contract of insurance, and as the written binder was not in accordance with the parol contract which the plaintiff and said Nevers and Havens undertook to make.

62 6th. That the plaintiff cannot be permitted to recover upon the contract set forth and contained in paper B, because it is so materially variant from the parol contract of said Nevers and Havens and the plaintiff that the minds of the parties cannot be held to have so met upon its terms as to create that contract between them.

7th. That it was not competent for Nevers and Havens, under the power conferred upon them, to bind the defendant by filling out and executing a binder during correspondence, after the property to be insured was destroyed and not in existence, so that there was no subject of insurance about which to correspond.

The court refused to instruct the jury, as requested by the defendants in each and all of said propositions, and charged the jury—

That upon the uncontradicted evidence in this case the plaintiff is entitled to the verdict.

63 The court having refused to instruct the jury as requested by the defendant, in each and all the propositions hereinabove set forth, the defendants' counsel excepted to such refusals respectively, and also to the instruction so given as aforesaid by the court to the jury;

they also excepted to each of said instructions given by the court contrary to said request.

The jury returned a verdict for the plaintiff under the foregoing instructions of the court; and inasmuch as the said several matters do not appear by the record, the defendants' counsel requests his honor, the judge of said court, to allow and sign this bill of exceptions, and his honor did, in pursuance of the said request, and of the statutes in such case provided, so allow and sign this bill of exceptions, containing the several matters aforesaid, at and during the term of the court aforesaid, to wit, at the September term of said court, A. D. 1872.

LEWIS B. WOODRUFF, *Judge.* [L. S.]
W'M D. SHIPMAN, *Judge.* [L. S.]

64 A.

Know all men by these presents that the Liverpool and London and Globe Insurance Company, of England, do hereby appoint Nevers & Havens, of Hartford, in the State of Connecticut, to be agents of said company, subject to revocation, for the transaction of insurance business in said State of Connecticut, with power as such agents to receive proposals for insurance, to issue certificates binding the company during correspondence only, on risks approved and submitted by them; to collect monies and to receive and deliver policies signed by two of the directors of said company resident in the city of New York, subject to the laws of said State of Connecticut.

In virtue whereof I, George W'm Gordon, of Boston, in the State of Massachusetts, hereunto duly authorized by said company, have, for them and in their behalf, hereunto affixed my hand and seal this tenth day of March, eighteen hundred and seventy-one.

GEO. W'M GORDON, [L. S.]
Gen'l Agenit for the New England States.

65 B.

OFFICE OF THE AGENCY OF THE LIVERPOOL
AND LONDON AND GLOBE INSURANCE COMPANY:

186 .

Mr. , having this effected an insurance against fire, on the conditions of this company, for the sum of , as per application No. of this date, a policy in conformity therewith will immediately be prepared and delivered, unless the company shall decline the risk, in which case notice to that effect will be given to the insured and the premium refunded; the insurance in the mean time to be binding on the company.

Amount, $.
Premium at $.

Agent of the Company.

66 C.

OFFICE OF THE AGENCY OF THE LIVERPOOL
AND LONDON AND GLOBE INSURANCE CO.,
Hartford, August 26th, 1870.

Mr. Samuel C. Colt, having this day effected an insurance against fire

on the conditions of this company, for the sum of ten thousand three hundred and seventy-five dollars, as per his application, No. , of this date, as follows:

$3,313⅓ on his main barn building, known as No. 1, situate on his farm in town of Farmington, Connecticut.

$666⅔ on his hay, grain, feed, and straw.

$3,333⅓ on cows contained therein; in case of loss no one cow to be valued over $300.

$500 on mules contained therein; in case of loss no one mule to be valued over $400.

$333⅓ on his frame-building, occupied as a carriage-house, granary, and chicken-house, situate detached from main barn, and known as No. 2.

A policy in conformity therewith will immediately be prepared and delivered, unless the company shall decline the risk; in which case notice to that effect will be given to the insured, and the premium refunded; the insurance in the mean time to be binding on the company.

Amount, $10,375.

Premium, at 2½ p'r c't., $259.38.

(Signed) NEVERS AND HAVENS,
Agents of the Company.

67 And on the same day the defendants filed in court their petition in error, and bond thereupon with writ of error and copy thereof, which petition and bond are in the words and figures following, viz:

68 Circuit court of the United States for the district of Connecticut.

SAMUEL C. COLT
vs.
THE LONDON, LIVERPOOL & GLOBE INSURANCE Company.

To the honorable the judges of the circuit court of the United States for the second circuit and district of Connecticut:

The petition of the said The London, Liverpool and Globe Insurance Company, defendants in the above-entitled action, respectfully represents, that said defendant is aggrieved by the final judgment rendered against this defendant in the said action, and is informed that there is error therein to its prejudice; and he desires that a writ of error be allowed thereupon to the Supreme Court of the United States.

Wherefore the defendant prays that a writ be allowed, returnable to the next term of the Supreme Court of the United States.

The London, Liverpool & Globe Insurance Co.,
By N. SHIPMAN,
Their Attorney.

69 Know all men by these presents that we, Eugene R. Harrington, of New York City, as principal, and Ezra Hall, of Hartford, in the district of Connecticut, as surety, are held and firmly bound unto Samuel C. Colt, of Hartford, in said district, in the full and just sum of ten thousand dollars, to be paid to the said Samuel C. Colt, his certain attorney, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 29th day of November, A. D. 1872.

Whereas lately at a circuit court of the United States within and for

the district of Connecticut, in a suit depending in said court between Samuel C. Colt and The London, Liverpool and Globe Insurance Company, judgment was rendered against the said London, Liverpool and Globe Insurance Company, having obtained a writ of error and filed a copy thereof in the clerk's office of the said court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Samuel C. Colt, citing and admonishing him to be and appear at a supreme court of the United States, to be holden at Washington the first Monday of December next:

70 Now the condition of the above obligation is such that if the said The London, Liverpool and Globe Insurance Company shall prosecute their said writ of error to effect and answer all damages and costs, in case they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

E. R. HARRINGTON. [L. S.]
EZRA HALL. [L. S.]
[L. S.]

Sealed & delivered in the presence of—
EDWIN E. MARONI.

Wherefore said writ of error is allowed to the Supreme Court of the United States, and execution is stayed herein until the coming in of the mandate thereof.

Attest:

LOREN P. WALDO,
Clerk.

71 I, Loren P. Waldo, clerk of the circuit court of the United States for the district of Connecticut, do certify that the foregoing is a true copy of the original process, pleadings, and proceedings in, and all things concerning, the cause of Samuel C. Colt against The London, Liverpool and Globe Insurance Company remaining on file and of record in the said court.

In testimony whereof, I have hereto set my name and the seal of said court, at Hartford, in said district, this 30th day of November, A. D. 1872.

[SEAL.] LOREN P. WALDO,
Clerk.

(Indorsement on cover:) No. 372. The London, Liverpool and Globe Insurance Company, plaintiffs in error, vs. Samuel C. Colt. Connecticut, C. C. U. S. Filed 14th December, 1872.

London, Liverpool, and Globe Ins. Co.,

Plaintiffs in Error,

vs.

SAMUEL C. COLT.

Supreme Court of United States.

BRIEF OF PLAINTIFFS IN ERROR.

HARTFORD, CONN.:
THE CASE, LOCKWOOD & BRAINARD CO., PRINTERS.
1874.

Supreme Court of United States.

London, Liverpool, & Globe Insurance Company,

PLAINTIFFS IN ERROR

vs.

SAMUEL C. COLT.

BRIEF OF PLAINTIFFS IN ERROR.

The plaintiffs were in 1870, and now are, an association organized under the laws of Great Britain, and doing business in the United States as a fire insurance company.

Nevers & Havens were in 1870 and at the time of the undertakings set forth in the record, agents of said Company in the City of Hartford and vicinity, for the transaction of their business of fire insurance, with such powers as the record discloses, and had completed, on the 26th day of August, 1870, a parol contract of insurance with the defendant to insure certain property with the said Company, if they had power under the limitations of their appointment, so as is set forth, to bind said company.

See record, p. 18.

From the finding it appears that said Nevers & Havens, as agents, had "such powers as are expressed in the documents referred to therein, or are legally to be inferred or implied from all the facts therein stated.

See Finding and Letter of Attorney.
Record, pp. 18, 20.

The Court below does not find that Nevers & Havens were general agents, nor, (except in the attempt to insure the property herein mentioned,) does it appear that they ever attempted to exercise any other or broader powers than are conferred by exhibit "A" annexed to the record.

Exhibit A confers "power as such agents to receive proposals for insurance, *to issue certificates binding the Company during correspondence only*, on risks *approved and submitted* by them; to collect moneys, and *to receive and deliver policies*, signed by two of the directors of said Company.

This letter of appointment is executed by Geo. Wm. Gordon, "*Gen'l Agent for the New England States.*"

The powers specified in the letter are *limited*, *specific*, and *definite*, and the agents thereby appointed could transact the business therein named; and that only; and only in the mode and manner therein specified.

This was the only *express* authority which the agents ever received from the Company, *and there is no evidence in the case from which any other can be* inferred or implied.

It does not appear that they were ever held out to the world as possessing any powers not included in this written appointment, or that they ever performed any acts, as agents, (until and except these in question,) which that appointment would not in terms justify.

Mr. Gordon resided in Boston, was the managing agent for said Association in the New England States, and with him Nevers & Havens corresponded touching all the affairs of their agency. "At the time of their appointment, and from time to time, they were supplied by the New England Manager of the Association, (Mr. Gordon,) with blanks, "binders" as they were called, (named in the letter of appointment as "certificates *binding* the Company,") for use in their business.

"These 'binders,' (of form like the one annexed to the record marked B,) the agents continued to use during the whole time of their agency, with approval of the Manager."

Having powers *so limited*, and having used *during the whole time of their agency* the specified certificates, they are found by the record to "*have completed* on the 26th day of August, 1870, *a parol contract of insurance* for the term of five years *from said date*, the insurance to be binding on and from that date, at a *premium then fixed and agreed to, and that credit was given for the payment of the premium till the first of October*."

The property was destroyed by fire on September 20, 1870, and on the 22d the agents, on request of the plaintiff (Defendant in Error) for a policy, filled out and executed the written contract annexed to the record and marked "C."

There was no ratification of the contract, express or inferential, for it is found that "neither said Gordon or principals had knowledge of the negotiations or contract to insure *till after the fire*, and no communications had been made to them in regard to the risk."

Paper "C" was never delivered. The premium was never paid, but *after the fire* it was tendered and *refused*.

The policies of plaintiff in error contain (among other *conditions*) the following:

"IV. That no insurance shall be conclusive or binding on this company unless the premium be previously paid thereon, and *that the only evidence* of such payment shall be the printed receipts issued from the office and witnessed by one of the clerks or agents of the company." Record, page 4.

The plaintiff (below) "declares" that this (among other conditions) was to "be binding upon the parties."

Declaration, Record, page 3.

The plaintiff in error claims here that the court below erred in refusing to charge according to the propositions stated in the bill of exceptions. (Record, page 19,) numbered 1st, 2d, 3d, 5th, 6th and 7th, and in charging the jury as is also set forth on said page, and in showing such error, relies upon the following points and authorities:

"Nevers & Havens had no power under the limited authority conferred upon them as aforesaid, to give credit for the premiums till October 1, or in any manner or to any extent to waive the prepayment thereof according to the conditions and stipulations of the policy declared on.

Story's Agency, Sec. 127, 133.
Wilson *vs.* Genessee M. Ins. Co., 14 N. Y., 421.
Tate *vs.* Ins. Co., 13 Gray, 79.
Stringham *vs.* Ins. Co., 5 Abbott's Pr. (U. S.), 80.
Bouton *vs.* Ins. Co., 25 Conn., 555.
Worcester Bank *vs.* Hartford F. Ins. Co., 11 Cush., 265.

Nevers & Havens were not clothed with ample powers to do a particular thing as to buy one bale of cotton or one ship, they were not general agents for a particular or special purpose and therefore possessing full authority to do whatever in their judgment was necessary to carry that object into effect, but they were in every sense of the term special or limited agents with restricted powers.

They were never held out to the world as full agents—there was no usage by which their powers were enlarged by parol.

They stood before the public and Mr. Colt with the narrow authority—contained in the letter of attorney—that and no more.

Nevers & Havens had no power to bind the company, except by written certificates substantially in the form of Ex-

hibit "B." They had no power to bind the company except "during correspondence only, on risks approved and submitted by them;" and they clearly had no power to "*complete a parol contract* of insurance for five years."

Wilson *vs.* Genessee M. Ins. Co., 14 N. Y., 421.
Bushby *vs.* North Am. Life Ins. Co.
Court of Appeals of Maryland *vs.* Ins. Journal, vol. 3, 697.

If an insurance company confines the business of its agents within the limits of the special written authority given them; it has a right to ask that it shall not be bound by any act of the agent not warranted thereby.

Farmers' Ins. Co. *vs.* Taylor, 73 Penn., 354.
Brander *vs.* Cali. Ins. Co., 2 Grant Pa., 470.
Wilson *vs.* Genessee M. Ins. Co., 14 N. Y., 418.
Mitchell *vs.* Lycoming Mut. Ins. Co., 51 Pa., 402.
Ins. Co. *vs.* Johnson, 23 Penn. State R., 72.
Stringham *vs.* St. Nicholas Ins. Co., 3 Keys, 280.
(Same case, 37 Howard Practice. Court of Appeals, 365, S. C. 5 Abbott Pr. R. (U. S.), 80.)
Martin *vs.* Farnsworth, 49 N. Y., 555.
Linfird *vs.* Ins. Co., 34 Beavan (28 *Jurist* 1067).

It is familiar law that a principal is not bound by the acts of a limited agent who exceeds his authority. That a limited agent must contract substantially in the mode and manner pointed out in the letter of Attorney; and that the other contracting party is bound to take notice of the limited and restricted character of the powers of such an agent.

Story on Agency, Sects. 126, 133.
Wilson & Genessee Mut. Ins. Co., 14 N. Y., 421.

Tate *vs.* Citizens Mut. Fire Ins. Co., 13 Gray, 79.
Hale *vs.* Mechanics Mut. Fire Ins. Co., 6 Gray, 169.
Stringham *vs.* St. Nicholas Mut. Co., 5 Abbott's Pr. (U. S.), 80.
Montreal Assurance Co. *vs.* McGilloway, 13 Moore's Privy Council Cases, 121, 2.
Thompson *vs.* Stewart, 3 Conn., 183.
Smith *vs.* Carr, 16 Conn., 455.
Harrison *vs.* City Fire Ins. Co., 9 Allen, 231 & 3.

In Harrison's case, (9 Allen, 232,) the agency was very similar to the agency here, and the Court say, "It is no answer to say that the plaintiff had no knowledge of the limited nature of the agent's authority." "This he was bound to do," &c.

See case.

These were all cases in which an insurance agent having limited powers undertook to do something outside of the proper scope of his agency, and in each case the Court sustains the Company in refusing to be bound by the act of the agent.

The recent case of Ryan *vs.* The World Mutual Life Ins. Co., 41 Conn., indicates that the Supreme Court of that State is not disposed to enlarge indefinitely the powers of the agents of insurance companies; and sees cause for alarm on behalf of the Companies as well as individuals; in their negligence, carelessness, and frauds.

Nevers & Havens had no power to bind the Company by making out the "binder" after the fire, inasmuch as there was previously no valid parol contract of insurance, and inas-

much as the binder was not in accordance with the parol contract found to have been made and "*completed.*"

Bentley *vs.* Columbia F. Ins. Co., 17 N. Y., 421.

The case furnishes no evidence of authority to the agents to enter into any agreements to pay for losses already incurred, when the Company was under no precedent obligation; and this would be the real and only effect of holding the binder attempted to be made by Nevers & Havens, valid, if it be other and different from the prior contract by parol.

F. CHAMBERLIN,
Of Counsel for Plaintiff in Error.

Supreme Court of the United States,

OCTOBER TERM, 1874.

LIVERPOOL AND LONDON AND GLOBE INSURANCE CO., Plaintiffs in Error,

vs.

SAMUEL C. COLT.

BRIEF FOR DEFENDANT IN ERROR.

R. D. HUBBARD,
H. C. ROBINSON, } *Of Counsel.*

Supreme Court of the United States.

LIVERPOOL AND LONDON AND GLOBE INSURANCE COMPANY,
Plaintiffs in Error.

vs.

SAMUEL C. COLT,
Defendant in Error.

DEFENDANT'S BRIEF.

At the time of the undertakings on which this suit is founded, the plaintiffs in error (defendants in the original suit) were doing business in the State of Connecticut as a fire insurance company. Nevers & Havens were, and for a long time previous thereto, had been, their agents in and for said State.

The instrument by which their agency was conferred was in the following language:

KNOW ALL MEN BY THESE PRESENTS:

That the Liverpool and London and Globe Insurance Company of England, do hereby appoint Nevers & Havens, of Hartford, in the State of Connecticut, to be Agents of said Company, subject to revocation, for the transaction of Insurance business in said State of Connecticut, with power as such agents to receive proposals for insurance, to issue certificates bind-

ing the Company, during correspondence only, on risks approved and submitted by them; to collect monies, and to receive and deliver policies signed by two of the Directors of said Company, resident in the City of New York, subject to the laws of said State of Connecticut.

In witness whereof, I, George Wm. Gordon, of Boston, in the State of Massachusetts, hereunto duly authorized by said Company, have for them and in their behalf hereunto affixed my hand and seal this tenth day of March, eighteen hundred and seventy-one.

GEO. WM. GORDON, [Seal.]

Gen'l Agent for the New England States.

The said Nevers & Havens, at the time they were appointed agents, and from time to time thereafter during the continuance of such agency, were supplied by the plaintiffs for use in their business, with certain blank forms of *binders*, so-called. These the agents continued to use during the whole term of their agency with the permission and approval of the plaintiffs. The blanks so furnished and used were in the following form:

OFFICE OF THE AGENCY OF THE LIVERPOOL AND LONDON AND GLOBE INSURANCE COMPANY:

186

M having this day effected an insurance against fire, on the conditions of this Company, for the sum of as per Application No. of this date, a Policy in conformity therewith will immediately be prepared and delivered, unless the Company shall decline the risk, in which case, notice to that effect will be given to the insured and the premium refunded; the insurance in the meantime to be binding on the Company.

Amount $ Premium at $

Agent of the Company.

On the 26th of August, 1870, the said Nevers & Havens, as agents for the plaintiffs, solicited of the defendant (plaintiff in the original suit) an insurance upon his premises, took his application, examined the property, made a survey and schedule, and

there was then completed a parol contract to insure said property for the term of five years from said date at a premium then fixed and agreed to. Credit was given for the payment of the premium till the 1st of October then next, and it was agreed that a policy should be made and that the agents of the company should keep the policy in their possession for the defendant in error till the 1st of October for his convenience as he had no safe and convenient place for keeping papers of that character.

The fire occurred on the 20th day of September and proofs of loss were duly made.

Immediately after the fire the plaintiffs' agents reduced to form the contract previously resting in memoranda.

The contract so drawn by the agents was in the following form:

OFFICE OF THE AGENCY OF THE LIVERPOOL AND LONDON AND GLOBE INSURANCE CO.:

Hfd., August 26, 1870.

Mr. Sam'l C. Colt, having this day effected an insurance against Fire, on the conditions of this Company, for the sum of *Ten Thousand, Three Hundred and Seventy-Five Dollars*, as per his application No. of this date, as follows:

$3,313 1-3	On his frame Main barn building, known as No. 1, situate on his farm in town of Farmington, Ct.
$666 2-3	On his Hay, Grain, Feed and Straw.
$3,333 1-3	On cows contained therein, in case of loss no one cow to be valued over $300.
$500	On mules contained therein, in case of loss no one mule to be valued over $400.
$333 1-3	On his frame building, occupied as a carriage house, grainary and chicken house, situate, detached from main barn, and known as No. 2.

A policy in conformity therewith will immediately be prepared and delivered, unless the Company shall decline the risk, in which case notice to that effect will be given to the insured and the premium refunded; the insurance in the meantime to be binding on the Company.

Amount, $10,375.

Premium at 2 1-2 per cent., $259.38.

[Signed] NEVERS & HAVENS,
Agents of the Company.

The premises were destroyed by fire on the 20th day of September, A. D. 1870, without fault of the defendant.

A day or two after the fire the defendant called for the written contract. The agents at first agreed to hand it to him, but afterwards, under instructions from Gordon, the general agent at Boston, declined to do so.

No notice of the company's declining the risk was given to the defendant and no offer was made to release him from his obligation to pay the premium. The defendant tendered the premium on September 22d, 1870, demanded the contract, and again on the first day of October when the premium was by the terms of the credit payable.

Upon this state of facts the evidence being closed, the plaintiffs in error requested the court to instruct the jury as stated in the bill of exceptions (Record p. 19). The court refused the instructions sought and instead thereof charged the jury that on the uncontradicted evidence in the cause the defendant in error was entitled to a verdict. The jury rendered a verdict in pursuance of the instructions so given, for the amount agreed to be due if the plaintiffs in error are liable at all.

On exceptions taken and allowed, this writ of error is brought.

The errors complained of are the instructions given and withheld. They resolve themselves into the following:

I.

THAT THE AGENTS, NEVERS & HAVENS, HAD NO RIGHT TO GIVE CREDIT FOR THE PREMIUMS.

Nevers & Havens were general agents of the plaintiffs for the purposes of the questions under discussion.

First, they are made by their commission "agents of said company, subject to revocation, for the transaction of insurance business in Connecticut." They were the sole agents of the

plaintiffs in Connecticut and the whole business of that State was intrusted to their agency. So much for the field of their agency and the mass of business committed to its charge.

Next, as to the powers specifically conferred; they were by the commission,—

(1.) To receive proposals of insurance generally throughout the State.

(2.) To issue certificates binding the company during correspondence only, on risks which the agents were to examine and approve.

(3.) To collect moneys due the company.

(4.) To deliver policies signed by certain directors of the company.

These powers would of themselves authorize the agents to accept in their supreme discretion any proposal of insurance which might be made to them, and to make at their discretion any contract of intermediate insurance during correspondence,—which contract would of course bind the company until the assured was notified that his proposals were rejected.

And third, the powers conferred by the commission, were enlarged by the blank binders which were furnished by the company and used by the agents, with the approval of the managers.

Coupling now the powers expressly conferred by the commission with those implied from the blank forms of binder it is manifest that the agents were fully authorized,

1. Not as before, to receive proposals merely, but to "effect insurance against fire," for just such terms, and at just such rates as they might think proper.

2. To agree that a policy should be prepared and delivered in conformity with such contract, unless the Company should disapprove the risk and notify the assured thereof, and in the meantime, and until such disapproval and notice, the contract to be in full force and effect.

If we are right in this interpretation of the commission and forms of binder and in the summary of powers deducible therefrom it is clear, that Nevers & Havens were in the strictest sense of the term general agents.

They were clothed with every and all possible powers of agency—save only this—that the contracts made by them were defeasible on the disapproval of the company and on notice given to the assured, and only in that way and from the time of such notice.

Even this reserved right of disapproval could not be arbitrarily exercised.

Perkins v. *Washington Co.*, 4 Cow., 645.
Ins. Co. v *Webster*, 6 Wall., 129.

The power here conferred is a larger power than the general agents of life insurance companies possess or exercise, for the latter almost universally make contracts conditional on the approval, and not, as in this case, on the disapproval of the company; and that, too, without the right to effect intermediate assurance. If, then, this be not a case of general agency, such a thing as a general agency is hardly possible in the business of life insurance—which it would be absurd to claim.

The right here reserved is less even than that which is ordinarily reserved in every policy of fire insurance, *to wit:* the right of the assured to cancel the contract and restore the premium.

"A general authority arises from a general employment in a specific capacity, such as factor, broker, attorney, &c. When we can say of any one that he is a factor, broker or attorney, he has then a general authority in the sense in which it is used in the text. But of course this does not imply that he has an unlimited or unrestrained authority, but as regards those parties who may have dealt with the broker, any limitation of the authority not communicated to them can have no effect."

Paley on Agency, (note,) 199.
Story " " §127.

If we are right in the premises it follows of necessity.

That Nevers & Havens, being general agents, had the right to give credit for the premium.

Eddie v. Exchange Fire Ins. Co. 57 N. Y. 111

Boehn v. *Williamsburg Co.*, 35 N. Y. 131.
Sheldon v. *Atlantic Co.*, 26 *Id.* 460.
Healon v. *Manhattan Co.*, 7 R. I. 502.
Bragdon v. *Appleton*, 42 Me. 259.
Miller v. *Brooklyn Ins. Co.*, 2 Bigelow Life & Acc. Rep. 35.
12 Hall. 285

Sheldon v. Conn. Mut. Life 25 Conn 2

1. Not as before, to receive proposals merely, but to "effect insurance against fire," for just such terms, and at just such rates as they might think proper.

2. To agree that a policy should be prepared and delivered in conformity with such contract, unless the Company should disapprove the risk and notify the assured thereof, and in the meantime, and until such disapproval and notice, the contract to be in full force and effect.

If we are right in this interpretation of the commission and forms of binder and in the summary of powers deducible therefrom it is clear, that Nevers & Havens were in the strictest sense of the term general agents.

They were clothed with every and all possible powers of agency—save only this—that the contracts made by them were defeasible on the disapproval of the company and on notice given to the assured, and only in that way and from the time of such notice.

Even this reserved right of disapproval could not be arbitrarily exercised.

Perkins v. *Washington Co.*, 4 Cow., 645.
Ins. Co. v *Webster*, 6 Wall., 129.

The power here conferred is a larger power than the general agents of life insurance companies possess or exercise, for the latter almost universally make contracts conditional on the approval, and not, as in this case, on the disapproval of the company; and that, too, without the right to effect intermediate assurance. If, then, this be not a case of general agency, such a thing as a general agency is hardly possible in the business of life insurance—which it would be absurd to claim.

The right here reserved is less even than that which is ordinarily reserved in every policy of fire insurance, *to wit:* the right of the assured to cancel the contract and restore the premium.

"A general authority arises from a general employment in a specific capacity, such as factor, broker, attorney, &c. When we can say of any one that he is a factor, broker or attorney, he has then a general authority in the sense in which it is used in the text. But of course this does not imply that he has an unlimited or unrestrained authority, but as regards those parties who may have dealt with the broker, any limitation of the authority not communicated to them can have no effect."

Paley on Agency, (note,) 199.
Story " " §127.

If we are right in the premises it follows of necessity.

That Nevers & Havens, being general agents, had the right to give credit for the premium.

Boehn v. *Williamsburg Co.*, 35 N. Y. 131.
Sheldon v. *Atlantic Co.*, 26 *Id.* 460.
Healon v. *Manhattan Co.*, 7 R. I. 502.
Bragdon v. *Appleton*, 42 Me. 259.
Miller v. *Brooklyn Ins. Co.*, 2 Bigelow Life & Acc. Rep. 35.

II.

THAT SAID AGENTS HAD NO POWER TO BIND THE CORPORATION EXCEPT BY WRITTEN CERTIFICATES SUBSTANTIALLY IN THE FORM OF PAPER B.

The plaintiffs were not entitled to this instruction as asked, because:

1. The contract as reduced to writing was in the form of paper B.

2. If Nevers & Havens were, as before contended, general agents, their right to insure by parol would follow as a necessary legal consequence; for even if it be conceded, as the plaintiffs claim, that the commission prohibits the agents from insuring by parol, this restriction would not be binding on those persons to whom it was not communicated.

Ins. Co. v. *Wilkinson.* 13 Wall. 222.

"A person is sometimes said to be a special agent, whose authority, although it extends to do acts generally in a particular business or employment, is yet qualified and restrained by limitations, conditions, and instructions of a special nature. In such case the agent is deemed, as to persons dealing with him in ignorance of such special limitations, conditions and instructions, to be a general agent; although as between himself and his principal, he may be deemed a special agent. In short, the true distinction (as generally recognized)

between a general and special agent (or, as is sometimes called a particular agent) is this: a general agency does not impart an unqualified authority, but that which is derived from a multitude of instances, or in the general course of an employment or business; whereas a special agency is confined to an individual transaction."

Story on Agency, §19.

The agents were sent into the market for the purpose of making insurance contracts. They had the admitted right to contract for intermediate insurance, fix the terms of the contract and collect the premium. They were allowed to hold themselves out to the public as agents.

Now even a special agent has by implication of law the right to exercise the usual modes and means of accomplishing his agency and to do all acts which are within the apparent scope of his agency, and an agent who has a right to make an insurance contract in writing has, as an ordinary well known means to the exercise of that right, the power to make the parol agreement which is to form the written contract just as an agent empowered to contract by policy has the right to agree by antecedent parol contract to issue the policy.

"Where a power is given in writing it still must be construed as intending to confer all the usual means or sanctioning all the usual manners of performing what is intrusted to the agent. Nor is the power confined merely to the usual modes and means, but, whether the agency be special or general, the attorney may use appropriate modes and reasonable modes."

LeRoy v. *Beard*, 8 *How.*, 468.

"A general authority to effect sales of merchandise carries with it an authority to warrant, which is implied by law, and

consequently cannot be repelled by proof that the power to warrant was not given in terms."

1 *Smith's L. C.*, 327.

"But by far the largest portion of incidental powers is deduced from the particular business, employment, or character of the agents themselves.

"Whatever acts are usually done by such class of agents, whatever rights are usually exercised by them, and whatever duties are usually attached to them, all such acts, rights, and duties are allowed to be incidents to the authority confided to them in their particular business, employment, or character."

Story on Agency, § 106.

"The authority of an agent must be determined by the nature of his business and the apparent scope of his employment therein. It cannot be narrowed by private or undisclosed instructions, unless there is something in the nature of the business or circumstances of the case to indicate that the agent is acting under special instructions or limited powers."

Markey v. *Mutual Ins. Co.*, 103 *Mass.*, 78.

III.

THAT THE DEFENDANTS IN ERROR WERE NOT ENTITLED TO RECOVER ON THE WRITTEN CONTRACT BY REASON OF ITS VARIANCE FROM THE PAROL CONTRACT.

Under this point we are met by the objection

That the parol contract made by the agents before the fire was for the period of five years, and not conditional on the company's disapproval; and that the written instrument of contract made by the agents after the fire was conditional on disapproval, and therefore variant from the antecedent parol agreement.

To all which we answer:

1. That, even if the premises be conceded, the written contract is only variant from the literal tenor of the parol agreement, not from its legal effect, and for this reason:—

A contract by an agent, which exceeds his power, is good for so much as is justified by the power, whenever the boundaries between the excess and the rightful execution are distinguishable *omne majus in se continet minus.*

"Regularly it is true that when a man doth less than the commandment or authority committed to him, then the commandment or authority committed unto him being not pursued, the act is void. And when a man doeth that which he is authorized to do, and more, then it is good for that which is warranted and void for the rest."

2 *Co. Litt.*, 250, *a.*

"Where there is a complete execution of a power and something *ex abundante* is added, which is improper, there the execution shall be good and only the excess void; but where not a complete execution of a power, where the boundaries between the excess and execution are not distinguishable, it will be bad. Suppose a power to lease for twenty-one years and he leases for

forty. That shall be good for the twenty-one because it is a complete execution of the power, and it appears how much he has exceeded it. If the court can see the boundaries it will be good for the execution of the power and void for the excess."

Alexander v. *Alexander*, 2 Ves., 644.

"If the agent does what he was authorized to do and something more, it will be good so far as he was authorized to go, and the excess only would be void."

2 *Kent's Com.*, 619.

"The general principle which pervades all cases, is the same; that the principal is not bound by the unauthorized acts of his agent, but is bound where the authority is substantially pursued, or so far as it is distinctly pursued."

Story on Agency, § 167, 170.

Applying now this rule to the case at bar. Confessedly the power authorized the making of the contract subject to be defeated by matter *ex post facto*, to wit: the subsequent disapproval of the Company. The contract was to bind until such defeasance should occur. It was well for everything contained in it up to and until the Company should terminate it by disapproval and notice.

The line between the rightful execution and the excess is not only clear but has the distinctness of mathematics—and we are seeking performance of that part of the obligation which lies within the rightful execution, and for a loss which occurred under the contract before a disapproval by the Company. We are not compelled by the necessities of this case to ask anything whatever from the supposed excess or to attempt to vindicate it, though we might well do so, for

Lastly, the Company's reserved right of disapproval is nugatory as against the assured, if the agent assumed to contract absolutely; this restriction on the powers of the Company not having been communicated to the plaintiff.

See cases before cited.

2. But, next, the supposed variance is immaterial, because the antecedent parol contract justifies the judgment below without reference to the written certificate. And if it be urged here that the parol contract is in excess of the power, we answer as last above that the excess is separable from the rightful execution.

IV.

As to the claim that the agents had no right to execute a written contract after the fire, it only needs to be added (1) that if no valid previous contract had been made the right is not claimed—(2) that if such previous contract was in fact made the right is self evident, and even if this were not so—(3) the recovery might as well pass on the previous contract as on the subsequent one.

Finally, we beg leave to cite a recent decision in the State of New York. The case was against these very plaintiffs, is very like the one at bar, and has a bearing upon all the questions involved in this cause.

The Liverpool and London and Globe Insurance Company appointed a local agent with power to receive proposals for insurance in Batavia and its vicinity, and to bind the Company during correspondence only.

On the 24th of October, 1864, the agent made an unconditional parol contract of insurance for one year, giving credit for the premium, and promised that a policy should be delivered in conformity to the contract. The agent never communicated to the Company the application or the agreement. On the 24th of January, 1865, the property was destroyed by fire. The premium had not been demanded by the agent, nor paid or tendered by the assured, nor had the policy been delivered.

On suit brought against the Company to compel the delivery of a policy and payment of the loss, held that the contract of the agent was binding on the Company and judgment was ordered for the plaintiffs.

Fish v. *Cottenet*, 44 N. Y., 538.

R. D. HUBBARD,
H. C. ROBINSON,
For Defendant in Error.

6 Wallace 125

14 N.Y.